

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOSHUA COPENHAVER,

CIVIL CASE NO. 06-11111

Plaintiff,

v.

HONORABLE PAUL V. GADOLA  
U.S. DISTRICT JUDGE

JEFFREY JAMES et al,

Defendants.

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**ORDER ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION**

On March 15, 2006, Plaintiff filed his complaint seeking relief, pursuant to 42 U.S.C. § 1983, from officials of the Florence Crane Correctional Facility where Plaintiff is a prisoner. Plaintiff set forth numerous claims against Defendants relating to his treatment while incarcerated. Defendants filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6) on May 24, 2006. On that same date, this Court referred all pretrial matters to Magistrate Judge Donald A. Scheer. After considering Defendant's motion, Magistrate Judge Scheer recommended that the motion to dismiss be granted because Plaintiff had failed to exhaust his available administrative remedies before filing the complaint.

The Court's standard of review for a magistrate judge's Report and Recommendation depends upon whether a party files objections. If a party does not object to the Report and Recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). If a party does object to portions of the Report and Recommendation, the Court reviews those portions *de novo*. *Lardie*, 221 F. Supp. 2d at 807. The Federal Rules of Civil Procedure dictate this standard of review in Rule 72(b), which

states, in relevant part, that

[t]he district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b). Here, because Plaintiff filed objections, this Court reviews *de novo* those portions to which an objection has been made. *See Lardie*, 221 F. Supp. 2d at 807.

*De novo* review in these circumstances requires at least a review of the evidence before the Magistrate Judge; the Court may not act solely on the basis of a magistrate judge's Report and Recommendation. *See* 12 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 3070.2 (1997); *see also Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court may supplement the record by entertaining additional evidence, but is not required to do so. 12 Wright, Federal Practice § 3070.2. After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the Magistrate Judge. *See Lardie*, 221 F. Supp. 2d at 807. If the Court accepts a Report and Recommendation, the Court is not required to state with specificity what it reviewed; it is sufficient for the Court to state that it engaged in a *de novo* review of the record and adopts the Report and Recommendation. *See id.*; 12 Wright, Federal Practice § 3070.2.

This Court has reviewed the Report and Recommendation of Magistrate Judge Scheer to which Plaintiff has objected, as well as the underlying evidence and filings in the record. Having conducted this review under the *de novo* standard, the Court concludes that the Magistrate Judge's reasoning and conclusions are sound; Plaintiff has failed to demonstrate exhaustion of his available administrative remedies. Consequently, this Court overrules Plaintiff's objections and accepts and

adopts the Report and Recommendation.

**ACCORDINGLY, IT IS HEREBY ORDERED** that Petitioner's objections [docket entry 27] are **OVERRULED**.

**IT IS FURTHER ORDERED** that the Report and Recommendation [docket entry 26] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

**IT IS FURTHER ORDERED** that Defendants' motion to dismiss [docket entry 23] is **GRANTED**.

**IT IS FURTHER ORDERED** that this action, case no. 06-11111, is **DISMISSED WITHOUT PREJUDICE**.

**SO ORDERED.**

Dated: July 25, 2006

s/Paul V. Gadola  
HONORABLE PAUL V. GADOLA  
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on July 25, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Christine M. Campbell, and I  
hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Joshua Copenhaver.

s/Ruth A. Brissaud  
Ruth A. Brissaud, Case Manager  
(810) 341-7845